IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2927 of 2000
WITH
CROSS OBJECTIONS NO. 21 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to th[e Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO. LTD.

Versus

MURTAZA KUTBUDINBHAI

Appearance:
MS MEGHA JANI for Petitioner
MS PAURAMI B SHETH for Respondent No. 1 & 2
MR PV NANAVATI for Respondent No.5
Respondent No. 3 served
NOTICE NOT RECD BACK for Respondent No. 4

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE J.R.VORA

Date of decision: 03/04/2001

ORAL JUDGEMENT (Per : MR.JUSTICE A.R.DAVE)

1. We have heard learned Advocate Ms. Megha Jani for appellant - The Oriental Insurance Co. Ltd., learned Advocate Shri P.V. Nanavati for respondent No.5 - United India Insurance Co. Ltd., who has also filed Cross Objections, and Ms.Paurami B. Sheth for respondents Nos. 1 and 2, who are the original claimants. Though served, no body appears on behalf of respondent No.3 Driver. Learned Advocate Ms. Megha Jani seeks leave to delete respondent No.4, who is owner of the vehicle, at this stage, as his presence is not required in the present proceedings. Permission for deleting respondent No.4 is granted and, therefore, the said respondent is deleted from this proceedings.

2. Brief facts of the present Appeal and the Cross Objections are as under :

On December 21, 1998 in a motor accident, a baby boy, aged 8 months expired. In the circumstances, Motor Accident Claim Petition No. 155 of 1999 has been filed by the parents of the deceased child before the Motor Accident Claims Tribunal, Surendranagar. Respondents No. 1 and 2 are father and mother of the deceased respectively in the said claim petition. A Sum of Rs. 2 lacs has been claimed by the claimants. During the pendency of the said proceedings, an Application below Exh. 23 was filed by the claimants praying for a sum of Rs. 1,54,500/- under the provisions of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"). The said Application was heard by the Tribunal and by an Award dated 5th April, 2000, the Tribunal has awarded a sum of Rs. 1,54,500/- to the claimants. It has been held by the Tribunal in the said Award that the present appellant and respondent No.5, both are Insurance Companies, are equally liable and, therefore, 50% of the amount of compensation should be paid by both the Insurance Companies. Being aggrieved by the said Award, the appellant, namely, The Oriental Insurance Co. Ltd., has filed the present Appeal. Respondent No.5 - United India Insurance Co. Ltd., has also filed Cross Objections as the said Insurance Company is also aggrieved by the Award.

3. We have heard the learned Advocates. Learned Advocate Shri P.V. Nanavati appearing for respondent No.5 - United India Insurance Co. Ltd. has submitted that the amount which has been awarded by the Tribunal is on the higher side. It has been submitted by him that the deceased was only 8 months old child, and yet, the Tribunal has presumed that the income of the child must

be Rs.15,000/- per annum. It has been submitted by learned Advocate Shri Nanavati that the presumption with regard to the income of the child as Rs.15,000/- per annum is a rebuttable presumption. There is nothing on record to show that the child would have earned substantial amount in future. In the circumstances, the Tribunal had committed a serious error while awarding a sum of Rs. 1,54,500/- in favour of the claimants. It has been submitted by him that instead of deducting 2/3 of the amount for the purpose of determining the amount of dependency, only 1/3 of the income was deducted by the Tribunal. He has relied upon the judgment in the case of DONAT LOUIS MACHADO vs. L. RAVINDRA, reported in ACJ 1999 (2) 1400, to say that in case of a child, 2/3 of the amount should be deducted for the purpose of determining the amount of dependency and not 1/3. Thus, he has also submitted that the Tribunal has committed error while determining the amount of dependency.

4. Lastly, learned Advocate Shri Nanavati has submitted that in the case of C.K. SUBRAMONIA IYER vs. KUNJU KUTTAN NAIR, reported in AIR 1970 SC 376, though the child was 10 years old, the Hon'ble Supreme Court had awarded only Rs.6,000/- by way of compensation as there was no material on record with regard to the future prospects of the child. It has been submitted by him that even in the instant case, no evidence has been led or no affidavit has been filed with regard to the prospects of the child's career and, therefore, the Tribunal has committed an error by awarding a substantial amount of Rs. 1,54,500/-.

5. Learned Advocate Ms. Megha Jani has also made arguments on the similar line.

6. On the other hand, learned advocate Ms. Paurami Sheth appearing for respondents - claimants has submitted that the Tribunal has not committed any error because for the purpose of determining the amount, the Tribunal has taken into account the provisions of the Second Schedule, which is forming part of the Act. As per the said Schedule, the Tribunal has rightly awarded a sum of Rs. 1,54,500/- to the parents of the deceased child. It has been submitted by her that, in fact, the claimants are entitled to get more amount but only a portion of the amount has been awarded to them by the Tribunal in an award passed below Exh.23 in Motor Accident Claim Petition No.155/1999 and the claimants are hopeful of getting more amount by way of compensation in the proceedings which are still pending before the Tribunal. It has been submitted by her that the claimants are ready

and willing to file an undertaking before the Tribunal to the effect that they would proceed further with the main petition and would not permit the said petition to be dismissed for default and they shall extend their cooperation to the Tribunal for getting the Motor Accident Claim Petition No. 155/99 decided at an early date. It has been submitted by her that the claimants would file the undertakings within four weeks from today.

7. We have heard the learned advocates and looking to the facts of the case, it is no doubt true that by virtue of the provisions of Section 163-A of the Act, some amount is to be paid to the claimants immediately. Looking to the object with which the said Section has been enacted, the Tribunal has awarded Rs.1,54,500/to the claimants at this stage. In the course of arguments, it has been submitted by the learned Advocate for the claimants that the claimants are ready and willing to go on with the main petition as soon as possible and they would extend their cooperation for early disposal of the main petition.

8. Looking to the facts of the case and especially in view of the fact that the main petition which has been filed under the provision of Section 166 of the Act is still pending before the Tribunal, if, at this stage, only a portion of the amount is permitted to be withdrawn by the claimants, ends of justice would be served. In the circumstances, we direct that 40% of the awarded amount shall be disbursed to the claimants in equal proportion by account payee cheques and the balance amount of 60% shall be invested in a nationalised bank for a period of 5 years in the name of the Nazir of the Tribunal and no amount shall be permitted to be borrowed on the security of the fixed deposit. The interest which might accrue on the said deposit shall be permitted to be withdrawn by the claimants. The amount which has been deposited by the Insurance Company with this Court shall be transmitted to the Tribunal immediately. Both the Insurance Companies i.e. Appellant - The Oriental Insurance Company Limited and respondent No.5 - United India Insurance Co. Ltd. shall deposit their shares, namely, 50% of the amount awarded, within a period of four weeks from today. The claimants shall file the undertakings within four weeks from today before the Tribunal to the effect that they would not withdraw the Motor Accident Claim Petition No. 155 of 1999 or they would not permit the said Petition to be dismissed for default, and they would cooperate with the Tribunal so that the Claim Petition can be finally disposed of at an early date.

9. In view of the above order, the First Appeal and Cross Objections are allowed to the aforesaid extent and the impugned Award is modified accordingly with no order as to costs.

10. The amount deposited with this Court shall be transmitted to the Tribunal as soon as possible.

(A.R. Dave, J.) (J.R. Vora, J.)